

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 98 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

KIRITKUMAR KANTILAL SANGHAVI

Versus

STATE OF GUJARAT

Appearance:

MR DIPAK R DAVE for Petitioner

MR KP RAVAL, APP for Respondent No. 1

NOTICE SERVED for Respondent No. 2

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 01/03/99

ORAL JUDGEMENT

Present petitioner-original accused of Criminal Case No.1603 of 1990, has preferred present Criminal Revision Application against the order passed by the City Sessions Judge in Criminal Appeal No.72 of 1998 wherein appeal of the present petitioner has been dismissed and the conviction order passed by the learned Metropolitan Magistrate in Criminal Case No.1603 of 1990 has been

confirmed.

2. The facts of this Criminal Revision Application are that on 22-8-1990, the Drug Inspector, State of Gujarat has filed one complaint before the Chief Metropolitan Magistrate, which was registered as Criminal Case No.1603 of 1990, alleging that on 11-4-1990 the shop owned by the present petitioner-original accused has been raided by the Drug Inspector. At that time, some medicines were found with the labels "Physician sample not to be sold" and "Central Government supply not for sale". It was further alleged in the said complaint that the present petitioner-original accused was illegally possessing the aforesaid medicines and was selling it and, therefore, he has filed the above criminal complaint under secs.18(c), 18(b), 18(a)(1), 27 and 28 of the Drugs and Cosmetics Act, 1940, hereinafter referred to as 'the Act'.

3. Process was issued and thereafter, accused pleaded not guilty and prayed for trial. To prove the guilt of the petitioner-accused, prosecution has examined various witnesses. At the end of trial, he has been convicted for breach of sec.18 of the Act and sentenced him to suffer R.I. for one year under sec.27 of the Act and to pay a fine of Rs.2,000/-, in default, to suffer S.I. for further six months by order dated 16-5-1998.

4. As I have stated earlier, present petitioner has preferred the Criminal Appeal No.72 of 1998 in the City Sessions Court, Ahmedabad wherein learned Additional City Sessions Judge has rejected the appeal of the present petitioner by confirming the conviction order passed by the Court below in Criminal Case No.1603 of 1990.

5. I have heard learned counsel for the petitioner, Mr.D.R.Dave and on behalf of the State, learned APP, Mr.K.P.Raval.

6. At the time of arguments, learned counsel for the petitioner, Mr.D.R.Dave has restricted his arguments only on the ground that physical condition of the present petitioner is such that he is totally handicapped and during the pendency of trial, he has suffered paresis (paralysis) and at present, he is having 50% permanent partial disability on his body as a whole, because of that, he is having 100% functional disability. He is also having hypertension and other incurable diseases and, therefore, he may be shown some sympathy. At present, he is taking treatment in the Civil Hospital at Ahmedabad through jail. Learned Counsel for the

petitioner has stated before the Bar that petitioner-accused is in jail since 31st January, 1999. Therefore, I have directed the Jail Authority through learned APP to submit health report of the petitioner-original accused and in turn, Jail Authority has submitted the health report of the present petitioner on 25-2-1999 whereby say of the learned counsel for the petitioner has been confirmed. The petitioner has also submitted documentary evidences to that effect in the petition at page Nos.29 to 35. As per the latest certificate issued by the Medical Officer, Ahmedabad Central Prison and that of the letter issued by the Resident Medical Officer, Civil Hospital, Ahmedabad, the present petitioner is suffering from various diseases, namely Hypertension Old CV stroke. He is having some mental disorder and for that, CT Scan of brain was suggested. Neurophysician was also consulted. 2D Echo has been suggested by Cardiologist and it was carried out on 26-2-1999.

7. In short, present petitioner-original accused is suffering from various incurable diseases along with permanent partial disability which comes in routine life and practically he is a disabled person, who is not in a position to look after himself properly and requires some permanent assistance.

8. I am aware that looking to the nature of offence, generally Court should not interfere for awarding lesser punishment because minimum punishment prescribed is of one year. But looking to the peculiar facts and circumstances of this case, which have already been narrated by me above, some special sympathy is required to be shown towards the petitioner, who is already suffering from various diseases and taking treatment in the Civil Hospital, Ahmedabad for which, even learned APP has no objection. This judgment should not form a precedent as it has been decided looking to the peculiar facts and circumstances of the case.

9. This Criminal Revision Application is, therefore, partly allowed. Sentence already undergone by the present petitioner-original accused is treated as sufficient punishment for having committed the breach of sec.18. Petitioner-accused is ordered to pay Rs.3,000/- plus a fine of Rs.2,000/- imposed by the Court below.

10. This Criminal Revision Application is disposed of with the aforesaid observation. D.S. is permitted.

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